IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24244 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 2 - Petitioner(s)
Versus
JAYESH DHAKTE - Respondent(s)

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Appearance :
MR YN RAVANI for Petitioner(s) : 1 - 3.
NOTICE SERVED BY DS for Respondent(s) : 1,
MR MS TRIVEDI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.THAKER

Date : 23/11/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

In this petition under Articles 226 and 227 of the Constitution, what is challenged by the Union of India and its Engineers in the All India Radio is the order dated 13.12.2005 passed by the Central Administrative Tribunal, Ahmedabad in Original Application No.344 of 2004 as well as the order dated 24.07.2006 passed by the said Tribunal rejecting Review Application No.05 of 2006 with MA No.54 of 2006 on the ground that the Tribunal has no power to condone the delay in filing the Review Application.

2. While issuing notice on 20.09.2007, we had made it clear that in view of the reliance placed by the learned Standing Counsel for Union of India on the decision of the Apex Court in Mangu Ram Vs. Municipal Corporation of Delhi, AIR 1976 SC 105, notice was issued for final disposal.

3. The respondent herein moved the Central Administrative Tribunal by filing Original Application No.344 of 2004 stating that he was a physically handicapped person with 50% disability and was appointed by the respondents before the Tribunal (i.e. the present petitioners) as Wireman in the physically handicapped quota. The respondent further stated that he had been serving with the authorities continuously for the last more than 10 years, but he was still not regularised in service. The petitioners herein

contested the application and contended that there was no relationship of employer and employee between the parties and that the work of maintenance at Doordarshan, Ahmedabad and All India Radio was managed through contractors. After hearing the learned counsel for the parties, the Tribunal allowed Original Application in the following terms :-

> “For the reasons discussed above and in the facts and circumstances of the case, we allow this OA and direct the respondents to consider the applicant for regularisation in service as Group 'D' Wireman against any available vacancy in group 'D'. If there is no vacancy available he shall be considered for regularisation against any next vacancy that becomes available in group 'D'. Till such regularisation, his services shall not be dispensed with without resorting to the service rules applicable to him. With this direction, the OA stands disposed of. No order as to costs.”

4. The petitioners herein i.e. the respondents before the Tribunal moved Review Application No.05 of 2006 with an application for condoning delay of eight days. By the impugned order dated 24.07.2006, the Tribunal rejected the application for review only on the ground that the Tribunal has no jurisdiction to condone the delay in filing the Review Application. Hence, this petition by the Union of India and its two Engineers.

5. Mr YN Ravani, learned Standing Counsel for Union of India has relied on the decision of the Apex Court in Mangu Ram Vs. Municipal Corporation of Delhi, AIR 1976 SC 105 in support of the

contention that the Tribunal does have the power to condone delay as the provisions of the Central Administrative Tribunal (Procedure) Rules, 1987 do not specifically exclude the applicability of the provisions of the Limitation Act, 1963 including the provisions of Section 5 conferring the power to condone the delay.

The other side is not in a position to distinguish the above judgment.

6. The Central Administrative Tribunal has been constituted under the Administrative Tribunals Act, 1985 enacted by the Parliament in exercise of the powers conferred by Article 323A of the Act. Section 21 of the Act provides for the period of limitation for filing an application before the Tribunal. As per the provisions of Clause (a) of sub-section (1) of Section 21, the period of limitation is one year from the date on which the order challenged before the Tribunal was made. Clause (b) of sub-section (1) and sub-section (2) also deal with other contingencies. Sub-section (3) of Section 21 reads as under :-

> “Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

Section 22 lays down the procedure and powers of the Tribunal. Sub-section (3) thereof confers upon the Tribunal the powers of a Civil Court in respect of several matters including "reviewing its decisions". The Act itself does not provide for any period of limitation for preferring an application for review before the Tribunal. Section 35 of the Act confers the powers upon the Central Government to make rules including the rules subject to which the Tribunal shall have the power to review its own procedure under sub-section (1) of Section 22 and additional matters in respect of which the Tribunal may exercise the powers of a Civil Court under sub-section (3) of Section 22.

In exercise of the aforesaid powers, the Central Government has framed the Central Administrative Tribunal (Procedure) Rules, 1987. Rule 17 reads as under :-

> "**Application for review –** (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.
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> (2) ..... ..... ..... .....
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> (3) ..... ..... ..... .....
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> (4) ..... ..... ..... .....
>
> (5) ..... ..... ..... ....."
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> (emphasis supplied)

Section 29 of the Limitation Act, 1963 reads as under :-

> **Savings –** (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.
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> (3) & (4) ..... ..... ..... ....."

7. The Tribunal has passed the impugned order rejecting the application for condonation of delay by relying upon the decision of a Full Bench of the Andhra Pradesh High Court in Writ Petition No.21734 of 1998 in G. Narshimha Rao Vs. The Regional Joint Director of School Education. The Tribunal has also quoted the relevant paragraph from the said decision of the Full Bench. It appears from the decision of the Tribunal that Andhra Pradesh High Court was impressed by the argument that the language of Rule 17 is couched in negative form and, therefore, disables the person from seeking review in case review is not filed within 30 days of the order. Andhra Pradesh High Court has further taken the view that the power of the Tribunal to condone the delay under Section 21 of the Act is only applicable to the Original Applications and not to the Review Applications.

8. A similar question came up for consideration before the Apex Court in Mangu Ram Vs. Municipal Corporation of Delhi, AIR 1976

SC 105 in the context of the provisions of sub-section (4) of Section 417 of the Code of Criminal Procedure, 1898 prescribing the period of limitation for application for special leave to appeal before the High Court from the order of acquittal. The said provision read as under :-

> "(4) No application under sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal."
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> (emphasis supplied)

The question examined by the Apex Court was whether the language employed in sub-section (4) of Section 417 of the Code of Criminal Procedure, 1898 excluded the applicability of the provisions of the Limitation Act as contemplated by sub-section (2) of Section 29 of the Limitation Act, 1963.

9. For answering the above question in the negative, the Apex Court gave the following reasons:-

> "Since under the Limitation Act, 1963 Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani's case AIR 1964 SC 260 = (1964 (1) Cri LJ 152) the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the

> language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it."
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> (emphasis supplied)

10. It is, thus, clear from the aforesaid decision of the Apex Court that mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5 of the Limitation Act. The aforesaid decision was also followed by this Court speaking through Hon'ble Mr. Justice J.M. Panchal (as His Lordships then was) in 1991(2) GLH 79, where the Court was concerned with similar provisions contained in Section 38 of the Presidency Small Cause Courts Act, 1882 prescribing the period of limitation for entertaining an application for retrial.

11. The provisions of Rule 17 under consideration prescribing the period of limitation for entertaining a Review Application are similar to the provisions of sub-section (4) of Section 417 of the Code of Criminal Procedure, 1898. The negative language employed in both the provisions is certainly emphatic. However, as observed by the Supreme Court, such would be the language of every provision prescribing the period of limitation and mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5 of the Limitation Act, 1963.

The conclusion is, therefore, irresistible that Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 which is a special law, does not exclude the applicability of the provisions of Sections 4 to 24 (inclusive of Limitation Act, 1963) and therefore, the provisions of Section 5 of the Limitation Act are very much applicable to applications for review being filed under Section 22(3) (f) of the Administrative Tribunals Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987.

12. We, therefore, set aside the impugned order dated 24.07.2006 of the Central Administrative Tribunal, Ahmedabad Bench in Review Application No.05 of 2006 with MA No.54 of 2006. Looking to the extent of delay (only eight days), we condone the

delay and remand the matter back to the Tribunal for hearing and deciding the said Review Application on merits.

It is clarified that we have not gone into the merits of the decision rendered by the Tribunal and the Tribunal shall hear and decide the Review Application in accordance with law without being influenced by any observations made in this order. The Tribunal shall henceforth proceed on the basis that the Tribunal has the power to condone the delay in filing Review Applications.

[M.S. SHAH, J.]

[K.M. THAKER, J.]

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